

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3036 OF 2007
IN
SUIT NO.3464 OF 1991

Brian Robert Alexander & ors.	Plaintiffs
versus	
M/s.A.G.Enterprises & ors.	Defendants

J.Menezes for plaintiffs.
Mr.N.G.Raut for defendant no.1.

CORAM : A.M.KHANWILKAR, J.

DATE : 06th September 2007

PC :

1. Heard counsel for the parties. Perused the pleadings on record. Indeed, the defendant/applicant has not filed the additional written statement within six weeks from 4th June 2002 as was ordered by this Court. However, it is an admitted fact that the defendants' advocate sent copy of additional written statement under the cover of letter dated 7th February 2004 to the advocate for the plaintiffs. The fact that the copy of said additional written statement as well as affidavit of documents has been received by the plaintiffs advocate, is not in dispute.

According to the defendants, the additional written statement remained to be filed due to inadvertence which was a mistake committed in the office by the advocate. The defendant no.1 is not responsible for the said mistake. Ordinarily there would have been no difficulty in accepting the argument of the litigant that the litigant should not suffer for the mistake of the advocate. However, in this case already this Court showed indulgence to the defendant no.1 by taking his written statement on record in spite of long delay in terms of order dated 16th October 2003 by imposing costs of Rs.20,000/-. In spite of that order the defendant no.1 and his advocates have not taken precaution to file the additional written statement within the specified time. Nevertheless, as no prejudice will be caused to the plaintiff if the additional written statement, which is already served on the plaintiff, is taken on record and the fact that the trial is already in progress, by way of indulgence the Notice of Motion is made absolute in terms of prayer clauses (a) and (b) on condition that defendant no.1 shall pay once again costs of Rs.20,000/- (Rs.Twenty thousand only) to the plaintiffs within two weeks from today. Payment of costs is condition precedent

MST

for taking the additional written statement on record. If the defendant no.1 fails to produce receipt/acknowledgement of payment within the stipulated time, the office to presume that this motion has been dismissed for non prosecution and ignore the order passed today.

(A.M.KHANWILKAR, J.)